

§ 801.421

21 CFR Ch. I (4–1–15 Edition)

(ii) Are not prohibited by this chapter or by regulations of the Federal Trade Commission.

[42 FR 9294, Feb. 15, 1977, as amended at 47 FR 9398, Mar. 5, 1982; 50 FR 30154, July 24, 1985; 54 FR 52396, Dec. 21, 1989; 64 FR 59620, Nov. 3, 1999; 69 FR 18803, Apr. 9, 2004; 73 FR 31360, June 2, 2008]

§ 801.421 Hearing aid devices; conditions for sale.

(a) *Medical evaluation requirements—*

(1) *General.* Except as provided in paragraph (a)(2) of this section, a hearing aid dispenser shall not sell a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician that states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding 6 months.

(2) *Waiver to the medical evaluation requirements.* If the prospective hearing aid user is 18 years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement of paragraph (a)(1) of this section provided that the hearing aid dispenser:

(i) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;

(ii) Does not in any way actively encourage the prospective user to waive such a medical evaluation; and

(iii) Affords the prospective user the opportunity to sign the following statement:

I have been advised by _____ (Hearing aid dispenser's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

(b) *Opportunity to review User Instructional Brochure.* Before signing any statement under paragraph (a)(2)(iii) of this section and before the sale of a hearing aid to a prospective user, the hearing aid dispenser shall:

(1) Provide the prospective user a copy of the User Instructional Brochure for a hearing aid that has been, or may be selected for the prospective user;

(2) Review the content of the User Instructional Brochure with the prospective user orally, or in the predominate method of communication used during the sale;

(3) Afford the prospective user an opportunity to read the User Instructional Brochure.

(c) *Availability of User Instructional Brochure.* (1) Upon request by an individual who is considering purchase of a hearing aid, a dispenser shall, with respect to any hearing aid that he dispenses, provide a copy of the User Instructional Brochure for the hearing aid or the name and address of the manufacturer or distributor from whom a User Instructional Brochure for the hearing aid may be obtained.

(2) In addition to assuring that a User Instructional Brochure accompanies each hearing aid, a manufacturer or distributor shall with respect to any hearing aid that he manufactures or distributes:

(i) Provide sufficient copies of the User Instructional Brochure to sellers for distribution to users and prospective users;

(ii) Provide a copy of the User Instructional Brochure to any hearing aid professional, user, or prospective user who requests a copy in writing.

(d) *Recordkeeping.* The dispenser shall retain for 3 years after the dispensing of a hearing aid a copy of any written statement from a physician required under paragraph (a)(1) of this section or any written statement waiving medical evaluation required under paragraph (a)(2)(iii) of this section.

(e) *Exemption for group auditory trainers.* Group auditory trainers, defined as a group amplification system purchased by a qualified school or institution for the purpose of communicating with and educating individuals with hearing impairments, are exempt from the requirements of this section.

[42 FR 9296, Feb. 15, 1977]